

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**

In re:

ASCENA RETAIL GROUP, INC., *et al.*,

Debtors.

Chapter 11

Case No. 20-33113 (KRH)

(Jointly Administered)

**OBJECTION OF THE UNITED STATES TRUSTEE TO CONFIRMATION
OF AMENDED JOINT CHAPTER 11 PLAN OF REORGANIZATION
OF ASCENA RETAIL GROUP, INC. AND ITS DEBTOR AFFILIATES**

John P. Fitzgerald, III, Acting United States Trustee for Region Four (the “United States Trustee”),¹ through counsel, in furtherance of the duties and responsibilities set forth in 28 U.S.C. § 586(a)(3) and (5) and pursuant to 11 U.S.C. § 307, the Federal Rules of Bankruptcy Procedure, and the Local Bankruptcy Rules for this District, hereby files this objection to the Amended Joint Chapter 11 Plan of Reorganization of Ascena Retail Group, Inc. and Its Debtor Affiliates filed on December 30, 2020 (ECF Doc. No. 1403) (the “Amended Plan”). In support of his objection, the United States Trustee represents and alleges as follows:

On July 31, 2020, the Debtors filed a disclosure statement and plan. *See* ECF Nos. 154, 155. On August 26, 2020, the United States Trustee filed an objection to the Disclosure Statement (the “UST Disclosure Statement Objection”). *See* ECF No. 411.

The United States Trustee submitted that, if applicable, objections raised with respect to

¹ Unless otherwise defined herein, capitalized terms shall have the definition assigned to them in the Disclosure Statement or the Plan.

the Disclosure Statement would “constitute objections to the confirmation of the Plan.” *Id.* The Debtors and the United States Trustee resolved some issues with respect to the Disclosure Statement, and the Debtors filed an amended Disclosure Statement and an amended Plan on September 9, 2020, and subsequently on September 11, 2020. See ECF Doc. No. 564, 565, 600, and 601. A hearing on the adequacy of the Debtors’ amended Disclosure Statement was held, and an order approving the adequacy of the Disclosure Statement was entered on September 11, 2020. *See* ECF No. 592. The United States Trustee filed an objection to confirmation of the September 11, 2020 plan on October 5, 2020 (the “Confirmation Objection”). *See* ECF No. 746. The Debtors and United States Trustee agreed that confirmation related objections raised in the UST Disclosure Statement Objection were preserved and would be addressed at the confirmation hearing.

After the cases switched path and a sale of the premium brands took place, the Plan was again amended on or about December 30, 2020. *See* ECF No. 1403.

LEGAL ARGUMENT

While some of the objections that the United States Trustee previously raised in the UST Disclosure Statement Objection and/or the Confirmation Objection were resolved through the filing of the amendments to the plan, the United States Trustee’s objection with respect to the third-party release provisions and exculpation provisions remain. The United States Trustee also believes that crucial information that was supposed to be filed with the Plan Supplement remains outstanding. Accordingly, the United States Trustee objects to confirmation of the Amended Plan in its current form.

First, the United States Trustee incorporates and adopts the confirmation objections raised in the UST Disclosure Statement Objection as well as in the Confirmation Objection with respect

to the third-party releases and exculpatory provisions. *See UST Disclosure Statement Objection*, ECF No. 411; Confirmation Objection, ECF No. 746.

Second, according to the Plan, the Plan Supplement was to be filed at least 14 days prior to the Voting Deadline, and, among other things, was to include the following:

- The identity of the Plan Administrator (*see Plan at Art. IV.E.1.a*);
- The Plan Administrator's compensation (*see Plan at Art. IV.E.1.c*);
- The identity of the GUC Trustee (*see Plan at Art. IV.P*);
- The terms of the GUC Trustee's engagement (*see Plan at Art. IV.P*); and
- The identity of any parties who will supervise the fees of the GUC Trustee (*see Plan at Art. IV.P*).

Despite various requests, the Debtors have yet to file a Plan Supplement containing that information. While various plan supplements have been filed to date, including the original Plan Supplement which contained a draft of the GUC Trust Agreement (*see ECF No. 719, Ex. H*), the information above has yet to be identified. In the interest of time, and because that information is essential to the confirmation of the Plan, pursuant to 11 U.S.C. § 1129(a)(5), it should be filed in advance of the hearing to provide the Court, the United States Trustee, creditors, and all other parties in interest an opportunity to review.

CONCLUSION AND RESERVATION OF RIGHTS

The Plan cannot be confirmed as it fails to comply with the applicable provisions of Section 1129. Accordingly, confirmation should be denied. The United States Trustee reserves his rights to object to other deficiencies at the hearing on the confirmation of the Amended Plan.

Respectfully Submitted,

JOHN P. FITZGERALD, III
Acting United States Trustee, Region 4

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